victim.") *Schmid v. Milwaukee Electric Tool Corporation*,13 F.3d 76.

The 9th Circuit said:

> A district court must determine (1) the existence of certain extraordinary circumstances, (2) the presence of willfulness, bad faith, or fault by the offending party, (3) the efficacy of lesser sanctions, (4) the relationship or nexus between the misconduct drawing the dismissal sanction and the matters in controversy in the case, and finally, as optional considerations where appropriate, (5) the prejudice to the party victim of the misconduct, and (6) the government interests at stake. We discuss each of these factors in turn. *Halaco Engineering Co. v. Costle*, 843 F.2d 376 (27 ERC 1481, 10 Fed.R.Serv.3d 1152.

The 10th Circuit Court of Appeals said mere negligence in losing or destroying records does not authorize an unfavorable inference. Aramburn v. Boeing Co., 112 F.3d 1398.

The Georgia cases cited by the three Judge panel to mandate the dismissal of Flury's suit held that dismissal is not mandated as a matter of law. *Bridgestone/Firestone North American Tire, LLC, et al. v. Campbell*, 258 Ga. App. 767, 574 S.E.2d 923 (2003). However, the three Judge Panel overruled the discretion of the trial Judge and made dismissal mandatory.

CONCLUSION

This Court should issue the Writ for Certiorari to the Eleventh Circuit Court of Appeals and correct the erroneous decision and eliminate the split among the Circuit Courts of Appeals by restoring the discretion to decide this to the District Court and to establish a Federal standard to be followed by all Circuit Courts of Appeals.

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